

**Chapter 45.5. Procurement of Site or Facility Cleanup Services****Article 1. Selection Process for Private Architectural and Engineering Services for Sites or Facilities.****§67900.1. Purpose and Scope.**

This article establishes the applicable criteria and procedures for procurement, by the Department of Toxic Substances Control, of architectural and engineering services related to response actions at hazardous substance sites and corrective actions at hazardous waste facilities. These criteria and procedures shall apply to the extent such response actions are not exempted from State contract requirements under Health and Safety Code section 25358.5 or covered by Health and Safety Code section 25358.6.1 and shall be in compliance with Government Code section 19130.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525, 4526 and 19130, Government Code; and Sections 25358.5 and 25358.6.1, Health and Safety Code.

**HISTORY**

1. New chapter 45.5 (article 1), article 1 ([sections 67900.1-67900.12](#)) and section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New chapter 45.5 (article 1), article 1 ([sections 67900.1-67900.12](#)) and section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
3. New chapter 45.5 (article 1), article 1 ([sections 67900.1-67900.12](#)) and section refiled 6-19-2002 as an emergency; operative 7-9-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11-6-2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-19-2002 order, including amendment of section and Note, transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

**§67900.2. Definitions.**

As used in these regulations:

(a) "Architectural, landscape architectural, engineering, environmental and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. Such services need to be procured pursuant to these regulations only if they are of the type which would lead to, or result in, instruments of service for the construction of a "project" as that term is used in the State Contract Act (commencing at section 10105 of the Public Contract Code).

(b) "Construction project management" means those services provided by a licensed architect, registered engineer or licensed general contractor which meet the requirements of section 4529.5 of the Government Code for management and supervision of work performed on State construction projects.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Director" means the Director of the Department of Toxic Substances Control or his/her designee.

(e) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with Federal and State environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to chapter 6.75 (commencing with section 25299.10) of division 20 of the Health and Safety Code.

(f) "Firm" means any individual, firm, partnership, corporation, association, joint venture or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525, 4526 and 4529.5, Government Code; and Section 10105, Public Contract Code.

**HISTORY**

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6-19-2002 as an emergency; operative 7-9-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11-6-2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-19-2002 order, including amendment of subsection (d), transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

**§67900.3. Publication of Announcement.**

(a) When a project requiring architectural, landscape architectural, engineering, environmental or land surveying services of a value of over \$1 million is identified by the Department, an announcement shall be made by

the Director through the State Contracting Register. In addition, the Director may selectively advertise to reach providers of services within the appropriate trade or profession by publishing the announcement through electronic communications media which support bulletin boards or Internet Web sites that have demonstrated statewide accessibility and are regularly maintained at established addresses by professional organizations which are representative of the services to be procured.

(b) For projects where such services in each instance shall not exceed \$1 million, the Director may make annual announcements, published as above, which identify the general needs of the State.

(c) The announcement shall contain the following minimal information: The nature of the work, the criteria upon which the award shall be made, and the time within which statements of interest, qualification and performance data must be received by the Director.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code; and Sections 25358.6.1, Health and Safety Code.

#### HISTORY

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6-19-2002 as an emergency; operative 7-9-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11-6-2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

#### **§67900.4. Establishment of Criteria.**

The Director shall establish criteria, on a case by case basis, which will comprise the basis for selection for each project which shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, staff capability, workload, ability to meet schedules, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards and other considerations deemed relevant. Such factors shall be weighted by the Director according to the nature of the project, the needs of the State and complexity and special requirements of the specific project.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

#### HISTORY

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6-19-2002 as an emergency; operative 7-9-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11-6-2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

#### **§67900.5. Selection of Architects, Engineers or Land Surveyors.**

After expiration of the announcement period stated in the publications, the Director shall evaluate statements of qualifications and performance data on file in the Department. The Director shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required service. From the firms with which discussions are held, the Director shall select no less than three, in order of preference, based upon the established criteria, who are deemed to be the most highly qualified to provide the services required.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

#### HISTORY

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
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3. New section refiled 6-19-2002 as an emergency; operative 7-9-2002 (Register 2002, No. 25). A Certificate of

Compliance must be transmitted to OAL by 11-6-2002 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

#### **§67900.6. Estimate of Value of Services.**

Before any discussion with any firm concerning fees, the Director shall cause an estimate of the value of such services to be prepared. Such estimates shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

##### **HISTORY**

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6-19-2002 as an emergency; operative 7-9-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11-6-2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

#### **§67900.7. Abandonment of Estimate.**

At any time the Director determines the State's estimate to be unrealistic due to rising costs, special conditions, or for other relevant considerations, the Director may require that the estimate be reevaluated.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

##### **HISTORY**

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6-19-2002 as an emergency; operative 7-9-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11-6-2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

#### **§67900.8. Negotiation.**

(a) The Director shall in accordance with section 6106 of the Public Contract Code attempt to negotiate a contract with the best qualified firm. Should the Director be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at fair and reasonable compensation, negotiations with that firm shall be terminated.

(b) The Director shall then undertake negotiations with the second most qualified firm. Failing accord, negotiations shall be terminated.

(c) The Director shall then undertake negotiations with the third most qualified firm. Failing accord, negotiations shall be terminated.

(d) Should the Director be unable to negotiate a satisfactory contract with any of the selected firms, the Director may select additional firms in the manner prescribed and continue the negotiation procedure.

NOTE: Authority cited: Section 4526, Government Code and Section 6106, Public Contract Code. . Reference: Sections 4526 and 4528, Government Code.

##### **HISTORY**

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
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4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

#### **§67900.9. Amendments.**

In instances where the State effects a necessary change in the project during the course of performance of the contract, the firm's compensation may be adjusted by mutual written agreement in a reasonable amount where the amount of work to be performed by the firm is changed from that which existed previously in the scope of work agreed to by both parties.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

##### **HISTORY**

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
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4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

#### **§67900.10. Contracting in Phases.**

(a) Should the Director determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price in the initial instance, provided that the Director shall have determined that:

- (1) The firm is best qualified to perform the whole project at reasonable cost, and;
- (2) The contract contains provisions that the State, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated, mutually agreed upon and reflected in a subsequent written instrument.

(b) The procedure with regard to estimates and negotiation shall otherwise be applicable.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

##### **HISTORY**

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
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4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

#### **§67900.11. Small Business Participants.**

(a) The Director shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for projects for which the Director concludes that small business firms could be especially qualified. The Director shall assist firms in attempting to qualify for small business status.

(b) A failure of the Director to send a copy of an announcement to any firm shall not operate to invalidate any contract.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.

##### **HISTORY**

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
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4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register

2002, No. 52).

**§67900.12. Conflict of Interest/Unlawful Activity.**

Any unlawful practice or activity is prohibited including, but not limited to rebates, kickbacks or any other unlawful activity. Department employees are specifically prohibited from participating in the contractor selection process when those employees have a relationship with a person or business entity seeking a contract under this section, as specified in Government Code section 87100.

NOTE: Authority cited: Sections 4526 and 87100, Government Code. Reference: Sections 4526, Government Code.

**HISTORY**

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
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